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8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 **In re:** **Case No. 15-43138 WJL**

11 **HAYDEE S. WONG,** **Chapter 13**

12 **Debtor.**

13 **MEMORANDUM OF POINTS AND**
14 **AUTHORITIES IN SUPPORT OF**
15 **DEBTOR'S MOTION FOR SANCTIONS**
16 **AGAINST JULIO MENDOZA, DDS,**
17 **FOR VIOLATING DEBTOR'S**
18 **DISCHARGE INJUNCTION**

19 **DATE: April 27, 2016**

20 **TIME: 10:30 AM**

21 **CTRM: 220**

22 **1300 Clay St., 2nd Floor,**
23 **Oakland, CA 94612**

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25 1. On October 13, 2015, Debtor Haydee Wong ("Debtor") filed the
26 above-captioned bankruptcy case.

27 2. On February 19, 2016, Debtor received a discharge in her no
28 asset Chapter 7 case, pursuant to 11 U.S.C. § 727. See docket #25 and
29 Exhibit B to the Declaration of Debtor's Counsel.

30 3. On February 26, 2016, Debtor received notice that Julio
31 Mendoza, DDS ("Creditor") was suing her in small claims court.

1 4. Debtor accidentally forgot to list Creditor when she filed her
2 bankruptcy schedules.

3 5. According to Creditor's letter and lawsuit, he is suing Debtor
4 for "dental work provided" on May 12, 2014. See Exhibit A to the
5 Declaration of Debtor.

6 6. 11 U.S.C. § 524 discusses the effects of a bankruptcy
7 discharge.

8 7. In particular, 11 U.S.C. § 524(a)(2) states that a discharge
9 operates "as an injunction against the commencement or continuation of
10 an action" to collect any debt discharged under 11 U.S.C. § 727.

11 8. The Ninth Circuit Court of Appeals held in *In re: Beezley*, 994
12 F.2d 1433 (1993), that a creditor who was not listed in a debtor's
13 schedules in a no asset chapter 7 case could nevertheless be subject
14 to the debtor's discharge and that a debtor need not amend her
15 schedules to include an omitted creditor.

16 9. The *Beezley* court stated "where section 523 does not except a
17 prepetition debt from discharge, the debt remains within the scope of
18 the discharge afforded by section 727. Scheduling, *per se*, is
19 irrelevant." *Id.* at 1436.

20 10. Creditor's lawsuit acknowledges that the debt in question is
21 a pre-petition unpaid medical debt, which is not excepted from
22 discharge under 11 U.S.C. § 523.

23 11. Thus, the debt owed to Creditor was discharged on February
24 19, 2016.

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1 12. On February 26, 2016, Debtor's Counsel, Corrine Bielejeski,
2 ("Debtor's Counsel") left a message with Creditor's secretary that
3 Debtor had filed a bankruptcy and received a discharge.

4 13. On February 29, 2016, Creditor called Debtor's Counsel.
5 Debtor's Counsel again informed Creditor that Debtor had received a
6 bankruptcy discharge and that the bankruptcy code and *In re: Beezley*
7 held that Creditor's debt was discharged, notwithstanding his
8 accidental omission from Debtor's schedules.

9 14. Despite being informed of the discharge injunction, Creditor
10 stated his intention to go forward with the lawsuit, saying he wanted
11 to "let the judge decide" and that Debtor "had better be there."

12 15. On March 1, 2016, worried that Creditor would move forward
13 with his small claims case, Debtor's Counsel prepared and mailed a
14 Notice of Stay of Proceedings to the state court. See Exhibit C
15 attached to the Declaration of Debtor's Counsel.

16 16. Also on March 1, 2016, Debtor's Counsel mailed Creditor a
17 letter confirming their conversation and reiterating the law.
18 Debtor's Counsel included a copy of Debtor's discharge and the Notice
19 of Stay in her letter. See Exhibit D attached to the Declaration of
20 Debtor's Counsel.

21 17. On March 6, 2016, Debtor's Counsel checked the small claims
22 docket. However, no dismissal of the action, notice of continuance,
23 or notice of stay was on file.

24 18. Pursuant to California Code of Civil Procedure § 116.530, no
25 attorney may represent a client in a small claims hearing. However,
26 an attorney may appear as a witness.

1 19. Since the matter was still on calendar and Debtor's Counsel
2 could not appear on Debtor's behalf, Debtor's Counsel advised her
3 client to attend the hearing the next day.

4 20. On March 7, 2016, Creditor, Debtor, and Debtor's Counsel
5 attended the small claims hearing set by Creditor.

6 21. The small claims judge referenced the Notice of Stay and
7 asked Creditor about Debtor's bankruptcy. Creditor said he knew
8 nothing about the bankruptcy.

9 22. The judge allowed the matter to proceed, stating that
10 Debtor's bankruptcy discharge did not stay the collection action.
11 Debtor's Counsel believes the judge did not understand the difference
12 between the automatic stay under 11 U.S.C. § 362 and the discharge
13 injunction of 11 U.S.C. § 524.

14 23. At the hearing, Creditor continued to insist that the judge
15 issue a judgment against Debtor, notwithstanding the injunction and
16 the information provided in Debtor's Counsel's letter.

17 24. After Debtor struggled to explain how the debt was
18 discharged, the judge allowed Debtor's Counsel to address the court
19 regarding Debtor's bankruptcy and the pertinent code and case law. He
20 took the matter under submission to review the law referenced by
21 Debtor's Counsel in her letter to Creditor.

22 25. Nothing that Debtor or Debtor's Counsel said or wrote to
23 Creditor got Creditor to cease his collections activity. Therefore,
24 Debtor is seeking sanctions against Creditor for his willful and
25 repeated violations of her discharge injunction.

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26. 11 U.S.C. § 105 (a) gives a bankruptcy judge broad powers to issue any order necessary to carry out the provision of the bankruptcy code. Courts have long recognized that this section gives judges the power to sanction a party and grant attorney's fees. See *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); *In re: Rainbow Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir. 1996); *In re: Deville*, 280 BR 483 (9th Cir. BAP 2002).

27. Debtor had to miss half of a day's work in order to attend the small claims hearing. She was able to take Paid Time Off, but Creditor's actions still forced her to have a reduction of 4 hours of PTO, for a loss to Debtor of \$91.00

28. In addition, Debtor was greatly disturbed to receive the collections paperwork. She was also extremely nervous before, during, and after the small claims hearing. She estimates her pain and suffering at \$500.00.

29. Debtor's Counsel tried to resolve the matter informally, but Creditor refused to cease his collection actions. Debtor's Counsel billed 7.2 hours at the rate of \$300/hr due to Creditor's willful and repeated violations of the Debtor's discharge injunction. She expects to bill another hour for attendance at the sanctions hearing and preparation of an order after hearing, for a total of \$2,460.00.

WHEREFORE Debtor prays the court will grant her motion.
Respectfully submitted:

Dated: March 24, 2016

/s/ Corrine Bielejeski
Corrine Bielejeski
Attorney for Debtor